

March 14, 2000

TO: All Chief Judges, Court Administrators, and Court Clerks

FROM: John D. Ferry, Jr.

**RE: SCAO Administrative Memorandum 2000-01;
Prison Condition Lawsuits (1999 Public Acts 147 and 148)**

EFFECTIVE

DATE: Immediately

Legislation effective November 1, 1999, was enacted to limit the filing of prisoner lawsuits, including those filed regarding prison conditions. The laws restrict the number of lawsuits that may be filed by a prisoner, place certain conditions on the filings, and create a new reporting requirement on courts and the State Court Administrative Office (SCAO). Also, judges are granted the authority to reduce or forfeit a prisoner's good time or disciplinary credits if the prisoner files an action prohibited under provisions of the new laws. *[MCL 600.5501 et seq., MCL 600.2963, and MCL 800.33]*

Courts must forward a copy of SCAO Form CC 78 (Dismissal of Prisoner Civil Action, Frivolous Action) to the SCAO upon entry. SCAO will compile information on all dismissals received and provide it on request to courts receiving new prisoner filings regarding prison conditions. *See Section B.4. below for specific instructions on forwarding and receiving dismissal information.*

A. Summary of the Legislation

1. Complaint and Filing

- a. A civil action, or appeal of a civil action, may not be filed by a prisoner who claims indigency until the court waives the filing fees or orders full or partial payment, and payments are made in accordance with the order. Once the reason for the waiver or suspension of fees no longer exists, the court is to order the fees and costs to be paid by the prisoner.

- b. A prisoner may not file an action concerning prison conditions until the prisoner has exhausted all available administrative remedies.
- c. Prisoners are required to indicate on their pleadings the number of previously filed civil actions or appeals of actions regarding prison conditions; failure to disclose this information will result in dismissal.
- d. A prisoner may not bring an action for mental or emotional injury unless the prisoner shows physical injury arising out of the incident giving rise to the mental or emotional injury.

2. Filing Fees and Dismissals

- a. A prisoner may not claim indigency to qualify for waiver of filing fees nor may the prisoner request appointment of counsel if they have brought an action that was dismissed as frivolous three or more times by the court unless they have suffered, or are under imminent danger of suffering serious physical injury, or have suffered, or are under imminent danger of suffering a criminal sexual conduct offense.
- b. Once filed, the court may dismiss a case on the finding that:
 - 1) the allegation of indigency is untrue;
 - 2) the action or appeal is frivolous;
 - 3) the action or appeal seeks monetary relief against a defendant who is immune from the requested relief; or
 - 4) the prisoner has not exhausted all administrative remedies.
- c. The court may dismiss, regardless of any filing fee paid, on the finding that:
 - 1) the claim of injury or imminent danger is false; or
 - 2) the prisoner failed to disclose the number of previously-filed actions regarding prison conditions.

3. Conduct of Hearing

- a. The court is to review as soon as practicable a complaint seeking redress from a governmental entity or officer or employee of a governmental entity.

- b. A defendant may waive the right to reply to an action, however a waiver does not constitute an admission of the allegations. Relief shall not be granted unless a reply has been filed. The court may require a defendant to reply if it finds that the plaintiff is likely to prevail on the merits; if the complaint is not dismissed, the court is to state on the record the reason for the decision.
- c. To the extent practicable, the court should use telephone, video conference, or other technology for pretrial proceedings; subject to agreement of the prison, hearings may be conducted at the prison with counsel being allowed to participate using telephone, video, or other technology.

4. Disposition

- a. Any damages awarded a prisoner shall go toward outstanding restitution orders; reasonable efforts are to be made to notify crime victims regarding the pending payment of damages.
- b. The court may order the revocation of good time or disciplinary credits if it finds:
 - 1) the prisoner has not exhausted all available administrative remedies; or
 - 2) their allegation of indigency is untrueand one of the following applies:
 - 1) the action or appeal seeks monetary relief against a defendant who is immune from requested relief;
 - 2) the claim was filed for a malicious purpose;
 - 3) the claim was filed solely to harass the party against whom it was filed; or
 - 4) the prisoner testified falsely or otherwise knowingly presented false evidence or information to the court.
- c. No prospective relief (any relief other than monetary) shall be granted unless the court finds that the relief is narrowly drawn, extends no further than necessary to correct the violation, and is the least intrusive means necessary to correct the violation of the right. The court is to give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the relief.

- d. The court may enter a temporary restraining order or an order for preliminary injunctive relief under certain conditions. In tailoring the relief, the court is to give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the preliminary relief. Preliminary injunctive relief shall automatically expire 90 days after the order is entered unless otherwise ordered by the court.
- e. Prospective relief may be modified or terminated under certain conditions enumerated in the act or on agreement of the parties.
- f. A defendant or intervener is entitled to immediate termination of prospective relief under certain conditions.

Judges should review the full text of the public acts, copies of which are attached, to note any specific conditions or exceptions.

B. Reporting Requirements

- 1. Upon entry, circuit courts are required to submit to SCAO a copy of all dismissals (frivolous action) of prisoner lawsuits filed regarding prison conditions. The dismissal shall state any outstanding filing fees and costs owed by the prisoner. New SCAO Form CC 78 (attached) has been developed for this purpose and may be mailed or faxed to SCAO as directed below and on the form. Camera-ready copies of CC 78 will be forwarded to SCAO Forms Contacts.
- 2. The SCAO is to compile and maintain a list of civil actions concerning prison conditions brought by a prisoner that are dismissed as frivolous. The list is to include an account of the amount of unpaid fees and costs associated with each dismissed case. The list is to be made available by the SCAO and courts are to refer to the list for the purpose of determining the existence and number of civil actions concerning prison conditions filed by each prisoner, and any associated unpaid fees and costs.
- 3. The SCAO will establish a statewide database and enter the information from local circuit courts onto the database. This information will then be available on request of local courts who receive a prisoner complaint to verify the number of cases previously filed and outstanding fees/costs. The information will be used by the judge to determine if the case will be reviewed by the court in accordance with provisions of the new law.

SCAO Administrative Memorandum 2000-01
Prison Condition Lawsuits
Page 5

4. Contact Information:

Send the completed and signed Form CC 78 (Dismissal of Prisoner Civil Action, Frivolous Action) to:

**State Court Administrative Office
Administrative Services Division
Attention: Beverly Westjohn
P.O. Box 30048
Lansing, Michigan 48909-7548
FAX No.: 517/373-8922**

To obtain information on previous dismissals, contact:

**Beverly Westjohn
SCAO Administrative Services Division
P.O. Box 30048
Lansing, Michigan 48909-7548
Phone: 517/373-2094
E-mail: westjohnb@jud.state.mi.us**

5. This new reporting requirement will be included in future statewide network programming when it becomes available.

For further information, contact James Covault or Patricia Corey Pulver at SCAO, Trial Court Services (phone: 517/373-7498).

Attachments:

1. SCAO Form CC78 (12/99) Dismissal of Prisoner Civil Action, Frivolous Action
2. 1999 Public Act 147
3. 1999 Public Act 148

[o:\files\temp\scao adm\2000-Prisoner Lawsuits-dft1.wpd]
March 14, 2000

STATE OF MICHIGAN
JUDICIAL CIRCUIT
COUNTYDISMISSAL OF PRISONER CIVIL ACTION,
Frivolous Action

CASE NO.

Court address

Court telephone no.

Plaintiff name and address

Prisoner number

Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant name and address

Defendant's attorney, bar no., address, and telephone no.

THE COURT FINDS:

1. The plaintiff filed a complaint on _____ concerning prison conditions.
Date
- ☐ 2. The plaintiff was determined indigent and unable to pay the filing fee and costs required by law.
- ☐ Full filing fee of \$_____ was waived. ☐ Partial filing fee of \$_____ was waived.
- ☐ An attorney was appointed.
- ☐ 3. The plaintiff was determined indigent and shall pay the filing fee and costs as required by MCL 600.2963.
- ☐ 4. Total unpaid fees and costs to date are: \$ _____
5. The complaint or a portion of the complaint is frivolous as follows:

IT IS ORDERED:

6. The civil action is dismissed with prejudice as a frivolous action and the following unpaid fees and costs shall be paid by the plaintiff in accordance with this order.

Filing Fee	\$ _____
Other Costs (specify)	\$ _____
Attorney Fees	\$ _____
Total	\$ _____

Payments toward the unpaid fees and costs shall be as follows:

- ☐ 7. The prisoner's ☐ good time credit ☐ disciplinary credit ☐ special disciplinary credits shall be reduced or forfeited as follows:

Date _____

Judge _____

Bar no. _____

A copy of this order shall be promptly mailed to the State Court Administrative Office.

Act No. 147
Public Acts of 1999
Approved by the Governor
November 1, 1999
Filed with the Secretary of State
November 1, 1999
EFFECTIVE DATE: November 1, 1999

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Senators Van Regenmorter, Byrum, Jaye, Shugars, Sikkema, Steil, Goschka, Hammerstrom, Bennett, Stille, Gougeon, Schuette, Rogers, Dunaskiss, North, McCotter, McManus, Johnson and Gast

ENROLLED SENATE BILL No. 419

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," by amending section 2963 (MCL 600.2963), as added by 1996 PA 555, and by adding chapter 55.

The People of the State of Michigan enact:

Sec. 2963. (1) If a prisoner under the jurisdiction of the department of corrections submits for filing a civil action as plaintiff in a court of this state or submits for filing an appeal in a civil action in a court of this state and states that he or she is indigent and therefore is unable to pay the filing fee and costs required by law, the prisoner making the claim of indigency shall submit to the court a certified copy of his or her institutional account, showing the current balance in the account and a 12-month history of deposits and withdrawals for the account. The court then shall order the prisoner to pay fees and costs as provided in this section. The court shall suspend the filing of the civil action or appeal until the filing fee or initial partial filing fee ordered under subsection (2) or (3) is received by the court. If the court orders that a prisoner pay a filing fee or partial filing fee, all documents submitted by the prisoner that relate to that action or appeal shall be returned to the prisoner by the court along with 2 certified copies of the court order. An additional certified copy of the court order shall be sent to the department of corrections facility where the prisoner is housed. The prisoner then shall, within 21 days after the date of the court order, resubmit to the court all documents relating to the action or appeal, accompanied by the required filing fee or partial filing fee and 1 certified copy of the court order. If the filing fee or initial partial filing fee is not received within 21 days after the day on which it was ordered, the court shall not file that action or appeal, and shall return to the plaintiff all documents submitted by the plaintiff that relate to that action or appeal.

(2) If, upon commencement of the civil action or the filing of the appeal, the balance in the prisoner's institutional account equals or exceeds the full amount of the filing fee required by law, the court shall order the prisoner to pay that amount.

(3) If, upon commencement of the civil action or the filing of the appeal, the balance in the prisoner's institutional account is less than the full amount of the filing fee required by law, the court shall require the prisoner to pay an initial partial filing fee in an amount equal to 50% of the greater of the following:

(a) The average monthly deposits to the prisoner's institutional account for the 12 months preceding the date on which the civil action is commenced or the appeal is filed.

(b) The average monthly balance in the prisoner's institutional account for the 12 months preceding the date on which the civil action is commenced or the appeal is filed.

(4) In determining the balance in a prisoner's institutional account for purposes of subsection (2) or (3), the court shall disregard amounts in the institutional account that are required by law or by another court order to be paid for any other purposes.

(5) In addition to an initial partial filing fee under subsection (3), the court shall order the prisoner to make monthly payments in an amount equal to 50% of the deposits made to the account. Payments under this subsection shall continue until the full amount of the filing fee is paid. The collection of payments from the account, and their remittal by the department of corrections, shall be conducted as provided in section 68 of 1953 PA 232, MCL 791.268. If costs are assessed against a prisoner, and if the balance of the prisoner's institutional account is not sufficient to pay the full amount of the costs assessed, the court shall order the prisoner to make payments in the same manner required in this section for the payment of filing fees, and the full amount of the costs shall be collected and paid in the manner provided in this subsection and in section 68 of 1953 PA 232, MCL 791.268.

(6) The total amount collected from a prisoner under subsections (3) to (5) shall not exceed the full amount of the filing fee and costs required by law.

(7) For purposes of this section, the fact of a prisoner's incarceration cannot be the sole basis for a determination of indigency. However, this section shall not prohibit a prisoner from commencing a civil action or filing an appeal in a civil action if the prisoner has no assets and no means by which to pay the initial partial filing fee. If the court, pursuant to court rule, waives or suspends the payment of fees and costs in an action described in subsection (1) because the prisoner has no assets and no means by which to pay the initial partial filing fee, the court shall order the fees and costs to be paid by the prisoner in the manner provided in this section when the reason for the waiver or suspension no longer exists.

(8) A prisoner who has failed to pay outstanding fees and costs as required under this section shall not commence a new civil action or appeal until the outstanding fees and costs have been paid.

(9) If a prisoner is ordered by a court to make monthly payments for the purpose of paying the balance of filing fees or costs under this section, the agency having custody of the prisoner shall remove those amounts from the institutional account of the prisoner subject to the order and, when an amount equal to the balance of the filing fees or costs due is removed, remit that amount as directed in the order.

CHAPTER 55.

PRISONER LITIGATION REFORM

Sec. 5501. A civil action concerning prison conditions shall be brought in the circuit court or the court of claims, as appropriate.

Sec. 5503. (1) A prisoner shall not file an action concerning prison conditions until the prisoner has exhausted all available administrative remedies.

(2) The court shall on its own motion or on the motion of a party dismiss an action concerning prison conditions brought by a prisoner as to 1 or more defendants if the court is satisfied that the action is frivolous or seeks monetary relief from a defendant who is immune from the requested relief.

(3) The court shall not appoint counsel paid for in whole or in part at taxpayer expense to a prisoner for the purpose of filing a civil action concerning prison conditions.

Sec. 5505. (1) Section 2963 applies to civil actions concerning prison conditions.

(2) The court shall dismiss a case at any time, regardless of any filing fee that may have been paid, if the court finds any of the following:

- (a) A prisoner's allegation of indigency is untrue.
- (b) The action or appeal is frivolous.
- (c) The action or appeal seeks monetary relief against a defendant who is immune from the requested relief.
- (d) A prisoner fails to comply with subsection (1).

Sec. 5507. (1) A prisoner shall not claim indigency under section 2963 in a civil action concerning prison conditions or an appeal of a judgment in a civil action concerning prison conditions or be allowed legal representation by an attorney who is directly or indirectly compensated for his or her services in whole or in part by state funds if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any prison, brought an action or appeal in a court of this state that was dismissed on the grounds that it was frivolous, unless the prisoner has suffered serious physical injury or is under imminent danger of suffering serious physical injury or has suffered or is under imminent danger of suffering conduct prohibited under section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(2) A prisoner who brings a civil action or appeals a judgment concerning prison conditions shall, upon commencement of the action or initiation of the appeal, disclose the number of civil actions and appeals that the prisoner has previously initiated.

(3) The court shall dismiss a civil action or appeal at any time, regardless of any filing fee that may have been paid, if the court finds any of the following:

- (a) The prisoner's claim of injury or of imminent danger under subsection (1) is false.
- (b) The prisoner fails to comply with the disclosure requirements of subsection (2).

Sec. 5509. (1) The court shall review as soon as practicable a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(2) On review, the court shall dismiss the complaint or a portion of the complaint if the court finds either of the following:

- (a) The complaint or a portion of the complaint is frivolous.
- (b) The complaint seeks monetary relief from a defendant who is immune from the requested relief.

(3) A defendant may waive the right to reply to an action brought by a prisoner. Notwithstanding any other law or rule of procedure, a waiver under this subsection does not constitute an admission of the allegations contained in the complaint. Relief shall not be granted to the plaintiff unless a reply has been filed.

(4) The court may require a defendant to reply to a complaint in a civil action concerning prison conditions if it finds that the plaintiff is likely to prevail on the merits.

(5) If, after reviewing the complaint, the court does not dismiss the complaint under this section, the court shall indicate in the record the reasons for that decision.

Sec. 5511. (1) A person shall not bring an action against this state or a subdivision of this state, or an official, employee, or agent of this state or a subdivision of this state, for mental or emotional injury suffered while in custody without a showing of physical injury arising out of the incident giving rise to the mental or emotional injury.

(2) Subject to section 220h of 1953 PA 232, MCL 791.220h, and the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, any damages awarded to a prisoner in connection with a civil action brought against a prison or against an official, employee, or agent of a prison shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner, including, but not limited to, restitution orders issued under the state correctional facility reimbursement act, 1935 PA 253, MCL 800.401 to 800.406, the prisoner reimbursement to the county act, 1984 PA 118, MCL 801.81 to 801.93, 1982 PA 14, MCL 801.301, and the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, any outstanding costs and fees, and any other debt or assessment owed to the jurisdiction housing the prisoner. The remainder of the award after full payment of all pending restitution orders, costs, and fees shall be forwarded to the prisoner.

(3) Before payment of any damages awarded to a prisoner in connection with a civil action described in subsection (2), the court awarding the damages shall make reasonable efforts to notify the victims of the crime for which the prisoner was convicted and incarcerated concerning the pending payment of damages.

Sec. 5513. In a civil action brought by a prisoner, the court may order the revocation of a prisoner's good time credit, disciplinary credit, or both, if, on its own motion or the motion of a party, the court finds that the prisoner filed an action prohibited under section 5503 or 5505 and 1 of the following applies:

- (a) The claim was filed for a malicious purpose.
- (b) The claim was filed solely to harass the party against whom it was filed.
- (c) The prisoner testified falsely or otherwise knowingly presents false evidence or information to the court.

Sec. 5515. (1) To the extent practicable, in an action brought by a prisoner, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the prison in which the prisoner is confined.

(2) Subject to the agreement of the official of the state or local unit of government with custody over the prisoner, hearings may be conducted at the prison in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in a hearing held at the prison.

Sec. 5517. (1) The court shall not grant or approve any prospective relief in a civil action concerning prison conditions unless the court finds that the relief is narrowly drawn, extends no further than necessary to correct the violation of the right, and is the least intrusive means necessary to correct the violation of the right. The court shall give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the relief.

(2) A court shall not order prospective relief that requires or permits a government official to exceed his or her authority under state or local law or otherwise violates local law, unless all of the following conditions exist:

- (a) State law permits the relief to be ordered in violation of local law.
- (b) The relief is necessary to correct the violation of a right under state or local law.
- (c) No other relief will correct the violation of the right.

(3) This section does not authorize a court, in exercising its remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the court.

Sec. 5519. The court may enter a temporary restraining order or an order for preliminary injunctive relief in a civil action concerning prison conditions to the extent otherwise authorized by law. Preliminary injunctive relief shall be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse effect on public safety or the operation of the criminal justice system caused by the preliminary relief in tailoring the preliminary relief. Preliminary injunctive relief shall automatically expire 90 days after the preliminary injunctive order is entered, unless the court makes the findings required under section 5517(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

Sec. 5521. (1) Except as provided in sections 5519 and 5523, prospective relief ordered in a civil action concerning prison conditions shall be terminable upon the motion of a party or intervenor as follows:

- (a) Two years after the date the court granted or approved the prospective relief.
- (b) One year after the date the court entered an order denying termination of prospective relief.
- (c) In the case of an order issued on or before the date the amendatory act that added this chapter is enacted into law, 2 years after that date of enactment.

(2) This section does not prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subsection (1).

Sec. 5523. (1) A defendant or intervenor is entitled to the immediate termination of a prospective relief ordered in a civil action concerning prison conditions if the relief was ordered in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the state right, and is the least intrusive means necessary to correct the violation of a right under state or local law.

(2) Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the right, extends no further than necessary to correct the violation of the right, and is narrowly drawn and the least intrusive means to correct the violation.

(3) A party shall not seek modification or termination before the relief is terminable under section 5521 to the extent that modification or termination would otherwise be legally permissible.

Sec. 5525. In a civil action concerning prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in sections 5517 and 5519.

Sec. 5527. (1) The court shall promptly rule on a motion to modify or terminate prospective relief in a civil action concerning prison conditions.

(2) Any prospective relief subject to a pending motion shall be automatically stayed during 1 of the following periods:

(a) Beginning on the thirtieth day after the motion is filed, in the case of a motion made under section 5521 or 5523, and ending on the date the court enters a final order ruling on the motion.

(b) Beginning on the one hundred eightieth day after the motion is filed, in the case of a motion made under any other law, and ending on the date the court enters a final order ruling on the motion.

(3) The court may postpone the effective date of an automatic stay specified in subsection (2) for good cause for not more than 60 days. As used in this subsection, "good cause" does not include the congestion of the court's calendar.

(4) An order staying, suspending, delaying, or barring the operation of an automatic stay described in subsection (2), other than an order to postpone the effective date of the automatic stay under subsection (3), shall be treated as an order denying the dissolution of or modification of an injunction and may be appealed as of right regardless of how the order is styled or whether the order is termed a preliminary or final ruling.

Sec. 5529. (1) The state court administrative office shall compile and maintain a list of the civil actions concerning prison conditions brought by a prisoner that are dismissed as frivolous. The list shall include an account of the amount of unpaid fees and costs associated with each dismissed case. The list shall be made available to the courts of this state for the purpose of ascertaining the existence and number of civil actions concerning prison conditions filed by each prisoner, and any associated unpaid fees and costs, for the purposes described in this chapter.

(2) A court in which a civil action concerning prison conditions is brought shall refer to the list described in subsection (1) to determine the number and existence of civil actions concerning prison conditions previously filed by a prisoner and any associated unpaid fees and costs.

Sec. 5531. As used in this chapter:

(a) "Civil action concerning prison conditions" means any civil proceeding seeking damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or omission of government officials, employees, or agents in the performance of their duties, but does not include proceedings challenging the fact or duration of confinement in prison, or parole appeals or major misconduct appeals under section 34 or section 55 of 1953 PA 232, MCL 791.234 and 791.255.

(b) "Consent decree" means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements.

(c) "Frivolous" means that term as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2591.

(d) "Prison" means a facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of state or local law.

(e) "Prisoner" means a person subject to incarceration, detention, or admission to a prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of state or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.

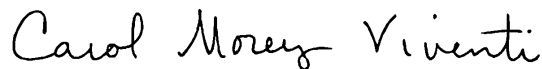
(f) "Private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled.

(g) "Prospective relief" means all relief other than monetary damages.

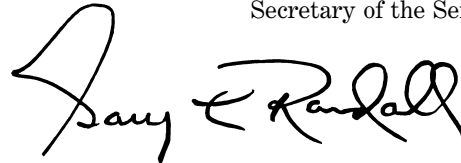
(h) "Relief" means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 500 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved

.....
Governor.

Act No. 148
Public Acts of 1999
Approved by the Governor
November 1, 1999
Filed with the Secretary of State
November 1, 1999
EFFECTIVE DATE: November 1, 1999

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Senators McCotter, Van Regenmorter, Byrum, Jaye, Shugars, Sikkema, Steil, Goschka, Hammerstrom, Bennett, Stille, Gougeon, Schuette, Rogers, Dunaskiss, North, McManus, Johnson and Gast

ENROLLED SENATE BILL No. 500

AN ACT to amend 1893 PA 118, entitled "An act to revise and consolidate the laws relative to state prisons, to state houses of correction, and branches of state prisons and reformatories, and the government and discipline thereof and to repeal all acts inconsistent therewith," by amending section 33 (MCL 800.33), as amended by 1994 PA 218.

The People of the State of Michigan enact:

Sec. 33. (1) A record of all major misconduct charges for which a prisoner has been found guilty shall be maintained and given to the parole board as part of the parole eligibility report prepared for each prisoner pursuant to section 35 of 1953 PA 232, MCL 791.235.

(2) Except as otherwise provided in this section, a prisoner who is serving a sentence for a crime committed before April 1, 1987, and who has not been found guilty of a major misconduct or had a violation of the laws of this state recorded against him or her shall receive a reduction from his or her sentence as follows:

- (a) During the first and second years of his or her sentence, 5 days for each month.
- (b) During the third and fourth years, 6 days for each month.
- (c) During the fifth and sixth years, 7 days for each month.
- (d) During the seventh, eighth, and ninth years, 9 days for each month.
- (e) During the tenth, eleventh, twelfth, thirteenth, and fourteenth years, 10 days for each month.
- (f) During the fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth years, 12 days for each month.
- (g) From and including the twentieth year, up to and including the period fixed for the expiration of the sentence, 15 days for each month.

(3) Except as provided in section 34, all prisoners serving a sentence for a crime that was committed on or after April 1, 1987 are eligible to earn disciplinary and special disciplinary credits as provided in subsection (5). Disciplinary credits shall be earned, forfeited, and restored as provided in this section. Accumulated disciplinary credits shall be deducted from a prisoner's minimum and maximum sentence in order to determine his or her parole eligibility date and discharge date.

(4) This section shall not be construed to allow good time, disciplinary credits, or special disciplinary credits in cases of commuted sentences unless so stipulated in the executive order commuting the sentence.

(5) Except as provided in section 34, all prisoners serving a sentence on December 30, 1982, or incarcerated after December 30, 1982, for the conviction of a crime enumerated in section 33b(a) to (cc) of 1953 PA 232, MCL 791.233b, are

eligible to earn a disciplinary credit of 5 days per month for each month served after December 30, 1982. Accumulated disciplinary credits shall be deducted from a prisoner's minimum and maximum sentence in order to determine his or her parole eligibility dates.

A prisoner shall not earn disciplinary credits under this subsection during any month in which the prisoner is found guilty of having committed a major misconduct. The amount of disciplinary credits not earned as a result of being found guilty of a major misconduct shall be limited to the disciplinary credits that would have been earned for the month in which the major misconduct occurred. Any disciplinary credits not earned as a result of the prisoner being found guilty of a major misconduct shall never be earned or restored. The warden may order that a prisoner found guilty of a major misconduct, including but not limited to charges of rioting, inciting to riot, escape, homicide, or assault and battery, forfeit all or a portion of the disciplinary credits accumulated prior to the month in which the misconduct occurred. An order forfeiting accumulated disciplinary credits shall be based upon a review of the prisoner's institutional record.

The disciplinary credit committee, which is comprised of the prisoner's resident unit manager, custody officers in the resident unit with direct supervisory responsibilities over the prisoner, and the appropriate work or school assignment supervisor, shall be a part of the reclassification process and shall review, at least annually, the status of each prisoner in the housing unit who has forfeited disciplinary credits. The committee may recommend to the warden whether any forfeited disciplinary credits should be restored to the prisoner.

In addition to disciplinary credits, a prisoner eligible for disciplinary credits under this subsection may be awarded 2 days per month special disciplinary credits for good institutional conduct on the recommendation of the disciplinary credit committee and the concurrence of the warden based on an annual review of the prisoner's institutional record. Special disciplinary credits shall not be awarded for any month in which a prisoner has been found guilty of a major misconduct.

The department of corrections shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to implement this subsection not more than 180 days after December 30, 1982.

(6) On and after April 1, 1987, a prisoner shall not earn good time under this section during any month in which the prisoner is found guilty of having committed a major misconduct. The amount of good time not earned as a result of being found guilty of a major misconduct shall be limited to the amount of good time that would have been earned during the month in which the major misconduct occurred. Any good time not earned as a result of the prisoner being found guilty of a major misconduct shall never be earned or restored.

(7) The department of corrections shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, prescribing how much of his or her accumulated good time or accumulated disciplinary credits the prisoner may forfeit if found guilty of 1 or more major misconducts.

(8) The warden may order that a prisoner found guilty of a major misconduct forfeit all or a portion of the good time accumulated prior to the month in which the misconduct occurred.

(9) The good time committee, which is comprised of the prisoner's resident unit manager, custody officer in the resident unit with direct supervisory responsibility over the prisoner, and the appropriate work or school assignment supervisor, shall be part of the reclassification process. The good time committee shall recommend to the warden the amount of special good time to be awarded and the restoration of any accumulated good time that has been forfeited.

(10) The warden, as a reward for good conduct, may restore to a prisoner the whole or any portion of the good time or disciplinary credits forfeited because of a finding of guilty for a major misconduct. However, forfeited good time or disciplinary credits shall not be restored without the recommendation of the disciplinary credit committee or good time committee and the prior written approval of the deputy director in charge of the bureau of correctional facilities or the deputy director in charge of the bureau of field services. Disciplinary credits or good time allowances that have not been earned because of institutional misconduct shall not be restored.

(11) A prisoner who has been sentenced concurrently for separate convictions shall have his or her good time or disciplinary credits computed on the basis of the longest of the concurrent sentences. If a prisoner is serving consecutive sentences for separate convictions, his or her good time or disciplinary credits shall be computed and accumulated on each sentence individually and all good time or disciplinary credits that have been earned on any of the sentences shall be subject to forfeiture pursuant to subsections (5) and (8).

(12) The warden of an institution may grant special good time allowances to eligible prisoners who are convicted of a crime that is committed before April 1, 1987. Special good time credit shall not exceed 50% of the good time allowances under the schedule in subsection (2). Special good time shall be awarded for good conduct only and shall not be awarded for any month in which a prisoner has been found guilty of a major misconduct.

(13) The parole board shall be exclusively empowered to cause the forfeiture of good time or disciplinary credits earned by a prisoner at the time of a parole violation.

(14) A prisoner subject to disciplinary time is not eligible for good time, special good time, disciplinary credits, or special disciplinary credits.

(15) The court may order the reduction or forfeiture of 1 or more of the following credits pursuant to section 5513 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5513:

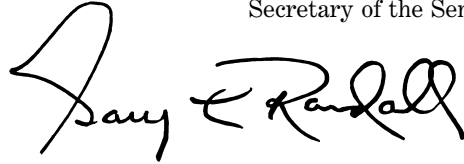
- (a) Good time.
- (b) Disciplinary.
- (c) Special disciplinary.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 419 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.